THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.13057 OF 2007

ORAL ORDER:

The petitioner claims to be the cultivating tenant in respect of Ac.3.00 cents of land situated in Sy.No.53 of Uppumaguluru village, Ballikurava mandal, Prakasam district, belonging to the 1st respondent-Temple. It is stated that he has been in possession and enjoyment of the said land for the past about 26 years and paying maktha regularly to the 1st respondent. It is stated that apart from the said leased land, he also owns Ac.1.61 cents of dry land situated in Sy.No.132/1 of the same village. However, even if the entire extent is taken into consideration, since the same does not exceed Ac.5.00, it is claimed that he comes within the meaning of small farmer.

While so, after making the Rules in G.O.Ms.No.373, Revenue Endowment, dated 11.3.2003 under Section 82(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Act"), the 1st respondent proposed to hold public auction for grant of leasehold rights in respect of the land in occupation of the petitioner. Since the petitioner continues to be in possession and, that apart, since he claims to be a small farmer, he made a request to the 1st respondent not to disturb his possession and to allow him to avail to the benefits of Section 82(2) of the Act. The 1st respondent failed to respond, but on the other hand, proceeded to conduct public auction and issued the impugned auction notice dated 18.6.2007. Hence, this writ petition seeking a declaration that the said action of the respondents is arbitrary and illegal.

In response to the notice ordered, a counter-affidavit has been filed on behalf of the 1st respondent-Temple stating that a notice in Form-I under rule 5(1) of the Rules made under G.O.Ms.No.373 dated

11.3.2003 was served on the petitioner on 17.5.2003. Thereafter, the impugned auction notice dated 18.6.2007 was issued and, accordingly, auction was also conducted on 21.6.2007. The claim of the petitioner that he is a landless poor person has been denied and it is stated that he never instituted any proceedings before the Assistant Commissioner of Endowments to declare him as a landless poor person.

The petitioner filed an affidavit in reply reiterating that he is a landless poor person since the total extent of the land possessed by him is less than Ac.5.00. It is also stated that the notice in Form-I issued by the respondents was not valid and that the 1st respondent is not competent to issue such notice. It is further contended that even assuming that his possession is unauthorized, he cannot be dispossessed without following the procedure prescribed under the Act.

I have heard the learned counsel for both the parties and perused the material on record.

A.P. Charitable and Hindu Religious and Endowments lease of Agricultural Lands Rules, 2003 were made in exercise of the power conferred under Section 82 read with Section 153(3) of the Act, which shall apply to all leases of agricultural lands belonging to the Charitable and Hindu Religious Institutions and Endowments governed by the provisions of the Act. As per Rule 3 of the Rules, immediately after coming into force of the Rules, if any cultivating tenant claims to be a landless poor person, the Assistant Commissioner of Endowments having territorial jurisdiction shall enquire into and decide such claim after giving a reasonable opportunity to the cultivating tenant as well as the Executive Authority of the concerned institution. If the cultivating tenant does not claim to be a landless poor person or where the Assistant Commissioner of Endowments determined that the cultivating tenant is not a landless poor person, the tenancy will be deemed to have been cancelled with

effect from 28.5.1987 and the cultivating tenant shall be regarded as a tenant holding over.

Admittedly, the Rules have come into force with effect from 13.3.2007 onwards. However, the petitioner did not institute any proceedings before the concerned Assistant Commissioner of Endowments seeking a declaration as landless poor person. Consequently, in terms of sub-rule (2) of Rule 3, the tenancy shall be deemed to have been cancelled with effect from 28.5.1987.

In the circumstances, the 1st respondent-Temple issued Form-I notice under Rule 5(1) of the Rules on 17.5.2003 informing the petitioner that the lease held by him stood cancelled by virtue of the provisions of sub-section (1) Section 82 of the Act and called upon him to hand over the possession of the land in his occupation. The petitioner did not dispute the said fact, but only contended that the 1st respondent was not competent to issue such notice. The said contention is untenable, since sub-section (3) of Section 2 defines the Executive Authority as a person who is entrusted with the management of the affairs of any particular Charitable and Hindu Religious Institution. Hence, Form-I notice issued by the Executive Officer of the 1st respondent cannot be held to be without authority.

Since, the continuation of the petitioner even after service of such notice shall be treated as illegal and unauthorized, nothing prevents the respondents to grant fresh leasehold rights in respect of the land in question.

So far as possession is concerned, the law is well-settled that it is open to the respondents to recover possession from a tenant holding over invoking the provisions under Sections 84, 85 and 86 of the Act.

The decision relied upon by the petitioner in **P . Srinivasa Reddy v. Assistant Commissioner, Endowments (**2005(2) ALT 554) has no application to the facts of the present case, since the petitioner therein was not a tenant holding over. In the said case, the lease granted in favour of the petitioner therein under a public auction

was still subsisting; however it was contended by the respondents that the said lease was not valid in law, since the auction was stage-managed and the lease documents were fabricated. This Court while observing that such a disputed question of fact cannot be enquired into and decided by this Court under Article 226 of the Constitution of India, further held that since, admittedly, the petitioners were in possession and that the lease in their favour was also subsisting, even assuming that such lease was granted otherwise than in accordance with the statutory rules, the respondents were not entitled to dispossess the petitioners without following the procedure prescribed under the Act, or to conduct fresh auction.

In the case on hand, the facts are entirely different. Since the lease in favour of the petitioner stood cancelled long back and even the notice in Form-I under Rule 5(1) of the Rules was served on the petitioner in the year 2003, the possession can be recovered from him invoking the provisions under Sections 84, 85 and 86 of the Act, as provided under Rule 5(1) of the Rules.

For the aforesaid reasons, I am unable to hold that the impugned action of the respondents in conducting public auction is arbitrary or illegal.

Accordingly, the writ petition is dismissed. No costs.

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G. ROHINI, J.

Dt. 31-8-2007
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.13057 OF 2007

DATED: 31-08-2007

Between :

Kodela Hanumantha Rao. … Petitioner

And

Sri Venugopalaswamy Temple,
Uppumaguluru, Ballikurava Mandal,
Prakasam district, represented by its
Manager and another. .. Respondents